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December 4, 2020

**VIA ECF**

The Honorable Lewis J. Liman  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St., Room 701  
New York, NY 10007-1312

Re: Steak n Shake Inc. v. Wilmington Trust, N.A., 20 Civ. 6096 (LJL)(SDA)

Dear Judge Liman:

On behalf of Steak n Shake Inc., (“Steak n Shake” or “Company”), we write jointly with counsel for Wilmington Trust, National Association (“Wilmington”) to request an adjournment of the trial date, currently set for December 15, 2020, until January 26, 2021, or the soonest date thereafter that the Court can accommodate, in light of the agreement entered into the parties, described below.

The Case Management Plan and Scheduling Order (ECF No. 22) and Amended Case Management Plan and Scheduling Order (ECF No. 23) set this case for a bench trial to begin on November 9, 2020. Pursuant to Your Honor’s ruling during the teleconference hearing held on November 18, 2020, the trial was rescheduled to begin on December 15, 2020 and to be conducted remotely. (See ECF No. 63 at 17).

The parties met and conferred and agreed to request this adjournment as part of a broader agreement. As Steak n Shake represented to the Court on November 26, 2020 (ECF No. 65), Steak n Shake has entered into a sales agreement for one property located at 32751 Concord Avenue, Madison Heights, Michigan (the “Specified Property”). Wilmington has agreed to release the lien on only the Specified Property contemporaneous with the consummation of that property sale, subject to several conditions set forth in a term sheet separately executed by the parties. The parties have agreed that, in lieu of applying the proceeds of that sale in accordance with Section 2.10(c) of the Credit Agreement, a portion of the purchase price shall be paid to Steak n Shake to be used by Steak n Shake for working capital (but not, for the avoidance of doubt, for capital expenditures) and that the remainder shall be paid to Wilmington to be applied to Obligations (as defined in the Credit Agreement) in such manner as determined by Wilmington in consultation with the Required Lenders (as defined in the Credit Agreement).

Over the next several weeks, Steak n Shake will endeavor to sell the other remaining fourteen real estate properties at issue in the above-referenced matter. The parties have agreed

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that if Steak n Shake has obtained sales agreements with non-affiliates of Steak n Shake for at least ten of these additional properties by three weeks prior to the new trial date, as set by Your Honor, Wilmington will not object to proceeding to trial on those properties; if Steak n Shake is unable to find a purchaser for at least ten of these additional properties by three weeks prior to the new trial date, then it will voluntarily dismiss the complaint without prejudice.

The parties are scheduled to appear before the Court for a pretrial conference on December 11, 2020 at 11:00 am. In light of the parties' joint request for an adjournment of the trial date, the parties respectfully propose the following amendments to the Amended Case Management Plan and Scheduling Order (ECF No. 23):

- The proposed joint pretrial order shall be submitted on ECF in accordance with the Court's Individual Practices in Civil Cases and Federal Rule of Civil Procedure 26(a)(2) no later than January 19, 2021, or at a time set by the Court consistent with the new trial date.

The parties further respectfully request that the Court vacate all other outstanding pretrial deadlines, including submission of remote trial procedures due on December 4, 2020.

Respectfully,

/s/ Nicholas L. McQuaid  
Nicholas L. McQuaid  
of LATHAM & WATKINS LLP

cc: All Counsel of Record


MEMORANDUM ENDORSED. The trial currently set for December 15, 2020 is ADJOURNED and will be held instead on January 26, 2021. The parties are directed to file a joint status letter on January 12, 2021 indicating the status of property sales and which property or properties will be the subject of trial.

Submission of the remote trial procedures and proposed joint pretrial order is due on January 15, 2021. The Court will hold a pretrial conference on January 22, 2021 at 10:00 a.m.

All other outstanding pretrial deadlines are canceled.

SO ORDERED. 12/7/2020

SO ORDERED.

  
LEWIS J. LIMAN  
United States District Judge